



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Telex Communications, Inc.

File: B-257811; B-257811.2

Date: October 4, 1994

DECISION

Telex Communications, Inc. protests the award of a contract to Valcom, Ltd. under invitation for bids (IFB) No. DAAB07-94-B-C225, issued by the Department of the Army for vehicular-mounted antennae and associated ancillary components. Telex argues that the contracting officer improperly determined that Valcom was a responsible bidder under the solicitation's special standards of responsibility (SSOR), and improperly deviated from the solicitation's evaluation scheme.

We dismiss the protests.

The solicitation, issued on March 31, 1994, contained line items for basic quantities of the antennae, antenna support bases, antenna element top assemblies, and antenna center assemblies, as well as line items for two 100-percent option quantities for each component. For each of these line items, bidders were to submit pricing for three or more ranges of quantities.

The IFB contained Federal Acquisition Regulation (FAR) § 52.217-05, which informed bidders that offers would be evaluated for award by adding the total price for all options to the total price for the basic requirements. The total for an option would be the price offered for the maximum option quantity. If varying option prices were offered, only the price offered for the maximum option quantity to be ordered would be considered in the evaluation for award. The IFB's cover sheet, Department of Defense Form 1707, instructed prospective bidders that the "range to be considered [would] be announced at [b]id [o]pening."

The solicitation required bidders to meet ten specific SSORs, including such things as successful production of the required type of antenna or similar equipment; provision of information on similar government contracts; and employment of a suitably experienced electronics engineer. The IFB provided that a pre-award survey would be conducted to

determine the contractor's ability to meet the SSORs before the contract was awarded.

Prior to opening the five bids received on the May 10 extended bid opening day, the contracting specialist announced the ranges that would be evaluated for each line item. For four of the line items, the ranges announced were not the ranges containing the maximum number of units. The maximum quantity within each announced range was used for evaluation purposes, with the pertinent results as follows:

Valcom	\$11,208,805
R.A. Miller	12,505,272
Telex	12,672,559

After Valcom was determined to be the low, responsive bidder, Telex filed an agency-level protest in which it asserted that the contracting officer should have evaluated the maximum option quantity for the highest range under each line item, rather than the maximum option quantity in the range announced at bid opening. The agency denied this protest on June 27, the same day it received the results of Valcom's preaward survey. Based on these results, which specifically evaluated the firm under the SSORs, the contracting officer determined that Valcom was a responsible bidder and awarded it the contract. Telex filed essentially the same protest in our Office on July 7, then filed a supplemental protest on July 29, in which it alleged that the contracting officer improperly determined that Valcom was a responsible bidder under the SSORs. Performance of the contract has been suspended pending resolution of these protests.

In its supplemental protest, Telex argued that Valcom could not have met the required SSORs listed in the solicitation. Specifically, Telex asserted that Valcom could not have successfully produced this antenna or similar equipment within the required time periods; could not have provided information on government contracts of similar complexity; and could not have employed a suitably experienced electronics engineer.

Our Office does not review affirmative determinations of responsibility absent a showing that such a determination was made fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(m)(5) (1994); Tutor-Saliba Corp., Perini Corp., Buckley & Co., Inc., and O & G Indus., Inc., A Joint Venture, B-255756, Mar. 29, 1994, 94-1 CPD ¶ 223. Here, there is no dispute by any of the parties that the SSORs are

definitive responsibility criteria,¹ and the agency report contained a detailed explanation of how the contracting officer made his responsibility determination, as well as the results of the preaward survey designed to determine compliance with these SSORs.

In its comments filed in response to the agency report, Telex devotes exactly one sentence to the substance of the agency's discussion: "Because the pre-award survey upon which the award to Valcom is based is subject to the outstanding protective order, no discussion of its contents will be made." Telex goes on to refer back to its initial protest allegations, and to cite the legal standard for reviewing an agency's determination that a firm has met definitive responsibility criteria.²

Since the agency's report contained detailed responses to and refutations of Telex's allegations, and since Telex has utterly failed to rebut the agency's position, we find that Telex has effectively abandoned its protest in this regard, and we will not consider it. Sun Microsystems Federal, Inc., B-254497.2; B-254497.3, May 20, 1994, 94-1 CPD ¶ 318; Datum Timing, Div. of Datum Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328. Telex's mere recitation of the applicable legal standard is not sufficient to show that the contracting officer's determination did not pass muster under that standard.

To the extent that Telex is asserting that it could not rebut the agency's position because a protective order has been issued in this protest, we note that the protective order itself explains the procedures under which protected information may be utilized in filings to our Office. As a result, our Office's imposition of a protective order does not prevent the filing of appropriately detailed comments. See generally Sector Technology, Inc., B-239420, June 7, 1990, 90-1 CPD ¶ 536.

¹Definitive responsibility criteria are specific objective standards established by an agency for use in a particular procurement to measure a bidder's ability to perform the contract; failure to meet a definitive responsibility criterion renders a firm nonresponsible and ineligible for contract award. FAR § 9.104-2; Stocker & Yale, Inc., B-238251, May 16, 1990, 90-1 CPD ¶ 475.

²A contracting officer may find compliance with definitive responsibility criteria based upon objective evidence only. Townscot Contracting Co., Inc., B-240289, Oct. 18, 1990, 90-2 CPD ¶ 313.

Since we dismiss Telex's protest of the contracting officer's responsibility determination, we find that the firm is not an interested party to raise its initial protest concerning the contracting officer's alleged deviation from the solicitation's evaluation scheme, and dismiss that basis of protest as well. Under the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may maintain a protest before our Office. An "interested party" is defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award a contract, 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a). Where a protester would not be in line for award even if we were to resolve the protested issue in its favor, the protester generally lacks standing as an "interested party." Jarrett S. Blankenship Co., B-250549, Jan. 14, 1993, 93-1 CPD ¶ 44. Here, even if we were to conclude that Telex's interpretation of the solicitation was correct, the Army's calculation of the bids under that interpretation shows that Valcom remains the low bidder, and that Telex is not in line for award.³

The protests are dismissed.


Christine S. Melody
Assistant General Counsel

³While Telex argues that it is an interested party because the solicitation was so flawed that a new solicitation must be issued, resolicitation would be a possible remedy only if the protester had alleged that the solicitation is ambiguous; in fact, Telex asserts that the solicitation is clear, and that the agency simply misinterpreted its provisions. To the extent that Telex is arguing that there is an ambiguity, our review of the solicitation shows that such ambiguity was apparent on its face. As a result, the protest should have been filed prior to the May 10 bid opening. 4 C.F.R. § 21.2(a)(1); General Elec. Co., 72 Comp. Gen. 519 (1992), 92-2 CPD ¶ 159. As it was not filed until well after that date, the protest is untimely.